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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/885,856	06/20/2001	William G. Dennis	0670004	3188

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12/13/2004

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EXAMINER

HAYES, MICHAEL J

ART UNIT PAPER NUMBER

3763

DATE MAILED: 12/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/885,856

Applicant(s)

DENNIS ET AL.

Examiner

Michael J. Hayes

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 October 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 32-39 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 32-39 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 June 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the shoulder of the inner support member as recited in claim 34 (the specification describes a shoulder 29 of the lower body portion at pg 8, Para 2, but does not describe a shoulder of inner support member 28 and no shoulder is labeled in the figures). No new matter should be entered.

The drawings are objected to under 37 CFR 1.83(a) because they fail to show mounting portion 41 as described in the specification. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Specification

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: there is no antecedent basis for a shoulder of the inner support member.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 32, 33, 34, 35, 36, and 38 are rejected under 35 U.S.C. 102(b) as being anticipated by FLATLAND et al. (U. S. Patent No. 5,752,938). Flatland discloses an instrument seal assembly including an upper body portion defining a throughbore, a cylindrical wall protector, a lower body portion defining a cannula receiving opening, a valve seal with upper 45 and lower 32 portions. Flatland further discloses an inner support member, having a shoulder, extending into the interior portion (See support member of figs. 23, 29), a sloped transition wall between the upper and lower portions with a shoulder extending from the wall where the shoulders of the wall and support member mate (see bottom of forked section supporting seal 45), a seal between wall shoulder and support member shoulder, and a frusto-conical sealing member. See Figs. 23, 29.

Claims 32, 33, 34, 35, 36, and 37 are rejected under 35 U.S.C. 102(b) as being anticipated by SMITH et al. (U. S. Patent No. 5,603,702). Smith discloses an instrument seal assembly including an upper body portion defining a throughbore, a lower body portion defining a cannula receiving opening, a valve seal with upper and lower portions, and a cylindrical wall protector between the throughbore and the upper seal portion. Smith further discloses an inner support member, having a shoulder, mating with the shoulder of a sloped transition wall and a seal between the two. See Figs. 13, 15.

Claims 32, 33, 34, and 35 are rejected under 35 U.S.C. 102(b) as being anticipated by HABER et al. (U. S. Patent No. 5,391,153). Haber discloses an instrument seal assembly including an upper body portion defining a throughbore, a cylindrical wall protector 100, a lower

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body portion defining a cannula receiving opening, a valve seal with upper and lower portions.

Haber further discloses an inner support member 104, with a shoulder extending into the interior, a lower body portion with a sloped transition wall that mates upper body to lower body 10 as seen in fig. 4.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 39 is rejected under 35 U.S.C. 103(a) as being unpatentable over FLATLAND, SMITH, or HABER as applied to claim 32 above, and further in view of ANTOON, Jr. et al. (U.S. Patent 5,628,732). Flatland, Smith, or Haber each disclose the claimed invention except for a reinforcing layer in the valve seal. Antoon discloses a valve seal assembly with a seal having a reinforcing layer 53 that can be integral, encapsulated or separate (col. 5, line 64 - col. 6, line 12). It would have been obvious to one of ordinary skill in the art at the time of the invention to use the teachings of Antoon in the seal assemblies of Flatland, Smith, or Haber in order to protect the seal from tearing.

Response to Arguments

Applicant has argued that the prior art does not show certain features of his invention in papers received 1/30/04 and 9/20/04. Though some of these arguments have been addressed in a

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previous office action mailed 4/21/04 they are repeated below where appropriate along with the discussion of Applicant's latest arguments.

Applicant argues that Flatland does not show a cylindrical wall member integrally formed with an upper surface at the throughbore. The examiner disagrees and refers Applicant to figs. 23 and 29 which show a wall member (member located above and between upper valve seal wall portion 45 and the throughbore) projecting into the interior of the upper body portion. This extension into the interior places the wall protector between the throughbore and the valve seal. The wall member is integral with the upper surface portion of the assembly.

Applicant argues that Smith does not show a cylindrical wall protector integrally formed with the upper surface of a throughbore or the protector between the throughbore and upper seal wall, extending into the upper seal portion. The examiner disagrees and refers Applicant to figs. 13 and 15. Smith shows a throughbore which has an upper surface. Integral with this upper surface is a wall protector forming the passageway for the instrument 400 in the upper seal portion, located between the seal 110 and the throughbore. The upper seal portion is mounted in the upper body portion. The lower body portion (from the sloped transition wall and below) does not mount the upper seal portion.

Applicant argues that Haber does not have a cylindrical wall protector integrally formed with the upper surface of a throughbore and extending inwardly into an interior of the upper body portion. The examiner does not agree and refers Applicant to fig. 4 where the upper body portion is shown above the sloped transition wall connecting to the lower body portion 10. The cylindrical wall portion 100 extends into the interior of the upper body portion. This wall

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protector 100 is integral with the upper surface of the throughbore and extends into the interior (i.e., extends past the outermost boundary of the upper portion of the upper seal portion.


Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. VANDENBROEK et al. (U. S. Patent No. 5,709,664) shows a seal assembly with upper and lower body portions, wall protector, and a unitary seal with upper and lower portions.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Hayes at (703) 305-5873. The examiner can usually be reached Monday -Thursday, 7:00-4:30, and on alternate Fridays. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nick Lucchesi, can be contacted at (703) 308-2698. The fax number for submitting official papers is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

mjh
7 December 2004


MICHAEL J. HAYES
PRIMARY EXAMINER